A BILL FOR AN ACT

Concerning Investigations by the Public Utilities Commission to Evaluate the Implications of Allowing Community Choice of Wholesale Electric Supply in Colorado Through the Vehicle of Community Choice Energy Authorities.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Investor-owned Utility Review Interim Study Committee. The bill declares that the concept of "community choice energy" (CCE), under
which a community may choose to purchase electricity at wholesale through a supplier other than the local investor-owned electric utility, has the potential to enable communities to meet their renewable energy goals and save money without disrupting the local utility's current status as sole supplier of transmission, distribution, and customer service functions. To lay the groundwork for potential adoption of CCE in Colorado, the bill proposes 2 studies:


- A feasibility study, conducted by an independent energy expert under the guidance of the public utilities commission (PUC), to examine the financial and technical requirements that would need to be met for CCE to be viable and beneficial; and
- An investigatory proceeding at the PUC, inviting testimony and documentation from persons with firsthand knowledge of utility operations, CCE, or both, including regulators from other states in which CCE has been implemented. The goal of the investigation is to identify best practices and recommend legislative changes that would allow CCE to function well in Colorado if adopted.

The bill directs that reports of the results of the feasibility study and the investigatory docket be given to the legislative committees with jurisdiction over energy matters in late 2020.

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1. Be it enacted by the General Assembly of the State of Colorado:

2. SECTION 1. In Colorado Revised Statutes, add 40-4-120 as follows:

3. **40-4-120. Community choice in wholesale electric supply - investigation and analysis - duties of commission - reports - legislative declaration - definition - repeal.** (1) Legislative declaration. (a) The General Assembly finds and determines that:

4. (I) At least a dozen communities in Colorado, known as the "Ready for 100" cities, have committed to obtaining one hundred percent renewable energy by 2025 to 2035. In addition, at least two dozen communities, known as "Colorado Communities for Climate Action", have organized to advocate for climate change solutions. These communities, which
REPRESENT MORE THAN ONE MILLION COLORADANS, CANNOT REACH THEIR ENERGY AND CLIMATE GOALS WITHIN THEIR DESIRED TIME PERIODS UNLESS THEY ARE GIVEN GREATER CHOICE AND CONTROL OVER THEIR WHOLESALE ELECTRICITY SUPPLY.

(II) A KEY ELEMENT OF THE GOVERNOR'S POLICY INITIATIVE, ENTITLED "ROADMAP TO 100% RENEWABLE ENERGY BY 2040 AND BOLD CLIMATE ACTION", PRIORITIZES SUPPORTING LOCAL COMMITMENTS TO ONE HUNDRED PERCENT RENEWABLE ENERGY.

(III) THE ABILITY OF A COMMUNITY TO ACHIEVE ITS ENERGY GOALS IS CURRENTLY LIMITED BY THE ENERGY SUPPLY AND DECARBONIZATION TIMELINE OF THE ELECTRIC UTILITY THAT SERVES THAT COMMUNITY'S GEOGRAPHIC AREA. THE ABILITY TO PROCURE ELECTRICITY FROM ALTERNATIVE WHOLESALE SUPPLIERS MAY ENABLE COMMUNITIES TO ACHIEVE THEIR ENERGY GOALS SUBSTANTIALLY FASTER AND MORE COST-EFFECTIVELY.

(IV) THE STUDY OF COMMUNITY CHOICE ENERGY (CCE), ALSO COMMONLY KNOWN AS COMMUNITY CHOICE AGGREGATION OR CCA, WHICH IS A LOCAL ENERGY MODEL THAT HAS BEEN ADOPTED IN A NUMBER OF STATES AND IS PROVING TO BE EFFECTIVE FOR COMMUNITIES IN ACHIEVING THEIR RENEWABLE ENERGY GOALS, WOULD ANSWER KEY QUESTIONS AND ILLUMINATE THE POTENTIAL BENEFITS AND CHALLENGES OF ADAPTING THAT MODEL FOR USE IN COLORADO.

(V) UNDER CCE, COMMUNITIES MAY CHOOSE THEIR WHOLESALE ELECTRICITY SUPPLIERS WHILE CONTINUING TO HAVE THE ELECTRICITY DELIVERED BY THE INCUMBENT UTILITY. THE CCE OPTION ALLOWS COMMUNITIES TO CHOOSE AMONG WHOLESALE POWER SUPPLIERS WITHOUT INTERFERING WITH NON-PROCUREMENT-RELATED UTILITY OPERATIONS.
(VI) In the CCE scenario, an investor-owned electric utility would continue to own and operate its transmission and distribution system, but the utility would no longer have a monopoly on providing the electricity supply to the jurisdiction. Utilities would continue to own their power generation, but if a community chooses to adopt CCE in pursuit of more affordable electricity rates and more aggressive renewable energy or other goals, the utility would deliver the electricity from one or more alternative suppliers and be appropriately compensated for its transmission and distribution services. In the wholesale, opt-out model of CCE, individual customers are automatically enrolled and retain the right to opt out of their community's CCE offerings and receive electricity supplied by the utility under its traditional "bundled service". The general assembly specifically finds that the opt-in model of CCE, where individual customers are not automatically enrolled in CCE, is a known recipe for failure, and that the retail model of CCE practiced in deregulated retail choice states does not promote the conditions needed for development of high levels of renewable energy.

(VII) A well-designed wholesale, opt-out CCE program would introduce an element of wholesale competition and community-level choice into the supply of electricity, likely driving lower rates and cleaner energy, while maintaining the viability and strength of Colorado's existing investor-owned electric utilities and without imposing additional costs on the utility or its bundled-service customers. CCE could also provide
COMMUNITIES THAT HAVE AMBITIOUS RENEWABLE ENERGY GOALS WITH
A MEANS TO REACH THOSE GOALS MORE QUICKLY AND COST-EFFECTIVELY.

(VIII) THIS SECTION PERTAINS ONLY TO A STUDY OF CCE, NOT ITS
IMPLEMENTATION. WHILE CCE SHOWS THE POTENTIAL TO ALLOW
COLORADO COMMUNITIES TO MAKE LOCAL ENERGY DECISIONS, MEET
THEIR ENERGY GOALS, REDUCE ENERGY COSTS, FOSTER LOCAL ECONOMIC
DEVELOPMENT, AND KEEP ENERGY DOLLARS CIRCULATING LOCALLY, IT IS
PRUDENT TO STUDY THE ECONOMIC AND TECHNICAL FEASIBILITY AND THE
REGULATORY IMPLICATIONS AND LEGAL IMPACTS OF CCE BEFORE
CONSIDERING CCE-ENABLELING LEGISLATION.

(IX) CCE IS AN INNOVATIVE CONCEPT, WHICH OTHER STATES
HAVE ALREADY SUCCESSFULLY IMPLEMENTED, GIVING COLORADO THE
OPPORTUNITY TO IDENTIFY BEST PRACTICES AND LESSONS LEARNED FROM
THEIR EXPERIENCES. THE TWO INDEPENDENT STUDIES DESCRIBED IN THIS
SECTION WILL ANSWER KEY QUESTIONS ABOUT THE VIABILITY OF CCE IN
COLORADO AND WILL AID IN DETERMINING THE OPTIMAL APPROACH FOR
CCE LEGISLATION IN COLORADO IF THE STUDIES SHOW NET BENEFITS FOR
COLORADO COMMUNITIES AND THE STATE. THE STUDIES WILL PROVIDE
THE INFORMATION NEEDED TO DETERMINE WHETHER THE APPARENT
PROMISE OF CCE FOR COLORADO'S ENERGY AND ECONOMIC FUTURE HAS
MERIT.

(b) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT IT IS IN
THE PUBLIC INTEREST TO DIRECT THE COMMISSION TO EVALUATE THE
VIABILITY OF THE WHOLESALE, OPT-OUT MODEL OF CCE IN COLORADO
AND TO ANSWER KEY QUESTIONS ABOUT CCE IN COLORADO IN TWO
SPECIFIC WAYS:

(I) BY OVERSEEING A THIRD-PARTY FINANCIAL AND TECHNICAL
(II) By conducting its own investigatory proceeding using
the mechanism of an investigatory docket to study regulatory
and legal issues.

(2) **Definition.** As used in this section, unless the context
otherwise requires, "Community Choice Energy" or "CCE" means
a mechanism that allows cities or counties, or groups of cities
and counties, to combine their purchasing power and choose one
or more alternative wholesale electricity suppliers on behalf
of the residents, businesses, and municipal facilities in the
jurisdiction while the incumbent utility continues to own and
operate its transmission and distribution system and deliver the
electricity.

(3) **Feasibility study.** (a) In accordance with this subsection
(3), the commission shall oversee, and report to the general
assembly the conclusions of, a study on the financial and
technical feasibility of allowing CCE in Colorado.

(b) The commission shall:

(I) Select, through a transparent, competitive process, an
independent and qualified agent to perform the study;

(II) Determine the scope of, and specific questions to be
addressed by, the study, subject to the guidelines set forth in
this subsection (3);

(III) Acquire the data necessary to effectively conduct
the study from the investor-owned electric utilities in a timely
fashion, utilizing confidentiality and nondisclosure agreements
only if customer-specific data are needed; and
(IV) REPORT THE PROCESS AND CONCLUSIONS OF THE STUDY, ON OR BEFORE NOVEMBER 30, 2020, TO THE TRANSPORTATION AND ENERGY COMMITTEE OF THE SENATE AND THE ENERGY AND ENVIRONMENT COMMITTEE OF THE HOUSE OF REPRESENTATIVES OR THEIR SUCCESSOR COMMITTEES.

(c) THE PURPOSE OF THE FINANCIAL COMPONENT OF THE STUDY IS TO ASSESS FINANCIAL FEASIBILITY AND RISK, INCLUDING THE POTENTIAL FOR RATE COMPETITIVENESS AND AN ESTIMATE OF THE AMOUNT AND DURATION OF ANY TRANSITION FEES, ALSO KNOWN AS EXIT FEES, THAT COMMUNITIES FORMING A CCE AUTHORITY WOULD PAY TO OFFSET THEIR FAIR SHARE OF THE COSTS OF UTILITY ASSETS AND CONTRACTS THAT WERE PROCURED ON THEIR BEHALF AND PREVIOUSLY APPROVED. THE AGENT SHALL MAKE THESE ASSESSMENTS USING INDUSTRY BEST PRACTICES AND ASSUMING A RANGE OF SCENARIOS THAT INCLUDE:

(I) THE LEVEL OF CCE PARTICIPATION IN COLORADO, INCLUDING BOTH THE NUMBER OF ELIGIBLE COMMUNITIES THAT CHOOSE TO FORM OR JOIN A CCE AUTHORITY AND THE ASSUMED OPT-OUT RATE OF THEIR CUSTOMERS, TO EVALUATE THE MARKET SCALE AND REVENUE GENERATION NEEDED FOR CCE TO SUCCEED IN COLORADO;

(II) ELEMENTS TO BE INCLUDED IN THE COST RECOVERY CONSIDERATION, INCLUDING THE AGE AND TIME OF SERVICE COMMENCEMENT OF GENERATION ASSETS AND EXISTING CONTRACTS; AND

(III) RATE ANALYSIS TO DETERMINE THE ABILITY OF CCE TO BE COST-COMPETITIVE IN COLORADO, INCLUDING CONSIDERATION OF REASONABLY ANTICIPATED TRENDS AND CONTINGENCIES AFFECTING THE PRICES OF FOSSIL FUELS AND RENEWABLE RESOURCES.

(d) THE PURPOSES OF THE TECHNICAL COMPONENT OF THE STUDY
ARE TO:

(I) PROVIDE INFORMATION ON REGULATORY AND POLICY CONSIDERATIONS FOR FORMING CCE AUTHORITIES IN A STATE THAT DOES NOT CURRENTLY BELONG TO A REGIONAL TRANSMISSION ORGANIZATION;

(II) RECOMMEND LEGISLATIVE LANGUAGE THAT:

(A) REAFFIRMS THE FEDERAL ENERGY REGULATORY COMMISSION’S ORDER 888, ISSUED APRIL 24, 1996, CONCERNING OPEN ACCESS TRANSMISSION TARIFFS; AND

(B) AUTHORIZES THE COMMISSION TO ESTABLISH FAIR TRANSMISSION ACCESS RULES AND PRICING;

(III) ASSESS THE IMPLICATIONS OF CCE FOR RESOURCE ADEQUACY AND RELIABILITY;

(IV) RECOMMEND LEGISLATIVE OR ADMINISTRATIVE MEASURES, OR BOTH, CONCERNING WHOLESALE MARKET ACCESS AND DEVELOPMENT IN COLORADO; AND

(V) CONSIDER OTHER LEGISLATIVE AND REGULATORY MODIFICATIONS NECESSARY TO SUCCESSFULLY IMPLEMENT CCE IN COLORADO.

(4) Investigatory docket. (a) ON OR BEFORE SEPTEMBER 1, 2020, AND IN ACCORDANCE WITH THIS SUBSECTION (4), THE COMMISSION SHALL OPEN AN INVESTIGATORY DOCKET TO ACCEPT TESTIMONY AND DOCUMENTATION FROM STAKEHOLDERS, INDEPENDENT ENERGY AND UTILITY EXPERTS, REGULATORS FROM STATES IN WHICH CCE HAS BEEN IMPLEMENTED OR IS UNDER CONSIDERATION, AND COMMISSION STAFF. THE GOAL OF THE PROCEEDING IS TO CONSIDER THE REGULATORY IMPLICATIONS AND LEGAL IMPACTS OF CCE LEGISLATION AND PROVIDE RECOMMENDATIONS TO THE GENERAL ASSEMBLY. CONCLUSIONS SHOULD
INCLUDE BEST PRACTICES AND LESSONS LEARNED FROM OTHER STATES THAT HAVE ENABLED CCE AT THE WHOLESALE LEVEL. THE COMMISSION SHALL EMPLOY PROCEDURES THAT PROMOTE A PRODUCTIVE, EFFECTIVE, AND EVIDENCE-BASED PROCESS.

(b) THE COMMISSION SHALL SOLICIT INPUT FROM A BROADLY INCLUSIVE RANGE OF STAKEHOLDERS AND PRESENTERS TO ENSURE THAT THE PROCESS IS NOT DOMINATED BY ANY ONE GROUP OR VIEWPOINT. STAKEHOLDERS AND PRESENTERS MAY INCLUDE:

(I) COMMUNITIES WITH DECLARED GOALS REGARDING CARBON EMISSIONS OR ENERGY SUPPLY CHOICES;

(II) BUSINESS GROUPS;

(III) ENVIRONMENTAL ADVOCATES;

(IV) CONSUMER ADVOCATES;

(V) ELECTRIC UTILITIES, INCLUDING INVESTOR-OWNED ELECTRIC UTILITIES, COOPERATIVE ELECTRIC ASSOCIATIONS, AND DISTRIBUTION COOPERATIVES;

(VI) INDEPENDENT POWER PRODUCERS;

(VII) POWER MARKETERS;

(VIII) RENEWABLE ENERGY DEVELOPERS;

(IX) CONSULTANTS OR OTHER EXPERTS IN ENERGY PROJECT FINANCING;

(X) CONSULTANTS OR OTHER EXPERTS IN ENERGY EFFICIENCY AND DISTRIBUTED ENERGY RESOURCES; AND

(XI) MEMBERS OF THE GENERAL PUBLIC.

(c) THE TOPICS AND QUESTIONS TO BE EXPLORED IN THE DOCKET MAY INCLUDE:

(I) WHETHER THE COMMISSION REQUIRES ADDITIONAL STATUTORY
AUTHORITY TO CONDUCT A RULE-MAKING PROCEEDING CONCERNING THE
CREATION OF CCE AUTHORITIES IN COLORADO;

(II) THE APPROPRIATE SCOPE OF REGULATORY OVERSIGHT OF CCE
OPERATIONS, ON A SCALE RANGING FROM COMPREHENSIVE TO MINIMAL;

(III) WHICH ASPECTS, IF ANY, OF CURRENT OR ANTICIPATED
INVESTOR-OWNED ELECTRIC UTILITY REGULATION BY THE COMMISSION
SHOULD APPLY TO CCE AUTHORITIES AS WELL, INCLUDING REGULATION
IN THE AREAS OF:

(A) RESOURCE ADEQUACY PLANNING;
(B) COMPLIANCE WITH RENEWABLE ENERGY STANDARDS;
(C) DEMAND-SIDE MANAGEMENT REQUIREMENTS; AND
(D) TIME-OF-USE RATES OR OTHER RATE REQUIREMENTS IF
MANDATED FOR INVESTOR-OWNED ELECTRIC UTILITIES;

(IV) THE APPROPRIATE CONSIDERATIONS FOR ESTABLISHING
REASONABLE EXIT FEES AT A LEVEL THAT PROVIDES COST RECOVERY FOR
STRANDED INVESTOR-OWNED ELECTRIC UTILITY ASSETS AND CONTRACTS
BUT DOES NOT UNDULY BURDEN PROSPECTIVE CCE CUSTOMERS,
INCLUDING THE POTENTIAL FOR EXIT FEES TO VARY OVER TIME OR BY
LOCATION, THE ESTABLISHMENT OF A SPECIFIC EXPIRATION PERIOD FOR
EXIT FEES, MEASURES TO MITIGATE EXIT FEE IMPACTS THROUGH
CONTRACT TRANSFER OR RESALE, AND APPROPRIATE FORECASTING OF
DEPARTING LOAD TO AVOID OVER-PROCUREMENT;

(V) THE APPROPRIATE CONDITIONS, LIMITATIONS, AND
PROCEDURES UNDER WHICH CUSTOMERS MAY OPT OUT OF CCE AND
RECEIVE BUNDLED SERVICE FROM THE INVESTOR-OWNED ELECTRIC
UTILITY;

(VI) WHETHER ANY OTHER CONSUMER PROTECTIONS WOULD BE
REQUIRED, AND THE MEANS OF PROVIDING THOSE PROTECTIONS;

(VII) Strategies for overcoming any challenges to the availability of credit for the startup or continuing operation of CCE programs;

(VIII) What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE, and possible solutions for those issues;

(IX) Whether an investor-owned electric utility that remains the sole provider of distribution, transmission, and other services traditionally provided by the utility, such as metering and billing, should also be the provider of last resort for supplying electricity to customers who opt out of CCE;

(X) The appropriate process for approval of CCE on behalf of customers within a jurisdiction;

(XI) What regulatory oversight, if any, should apply to resource procurement for CCE authorities, for example in the areas of:

(A) Standards for requests for proposals; or

(B) Assurance of reliability;

(XII) Whether legislation should be adopted or amended to guarantee open access and fair prices for transmission services;

(XIII) What minimum requirements should apply to independent power producers and power marketers who wish to supply energy to a CCE authority;

(XIV) What, if any, data-sharing requirements should be imposed on investor-owned electric utilities to help ensure that...
A CCE authority or a jurisdiction investigating whether to form
or join a CCE authority can reasonably evaluate its financial
and technical viability and implement its CCE program; and
(XV) whether the increasing integration of distributed
energy resources such as rooftop solar, community solar, and
battery energy storage into distribution systems would
facilitate or impede the implementation of CCE or, conversely,
whether CCE will facilitate or impede the development of
distributed energy resources.

(d) Report. The commission shall summarize its findings,
conclusions, and recommendations from the investigatory
docket in a final report to the transportation and energy
committee of the senate and the energy and environment
committee of the house of representatives or their successor
committees. The commission shall submit the report on or before
January 1, 2021. Recommendations may be split into majority
views and dissenting views if necessary.

(5) Repeal. This section is repealed, effective September 1,
2023.

SECTION 2. Safety clause. The general assembly hereby finds,
determines, and declares that this act is necessary for the immediate
preservation of the public peace, health, or safety.